

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALASKA AIRLINES, INC., an Alaska
corporation,

Plaintiff,

v.

BRADLEY CAREY and CELESTE CAREY,
husband and wife and the marital community
composed thereof, and CAREY TRAVEL,
INC., a Washington corporation

Defendants, Counterclaimants
and Third Party Plaintiffs,

vs.

POINTS INTERNATIONAL LTD.,

Third Party Defendant.

No. C07-5711 RBL

STIPULATED PROTECTIVE ORDER

Plaintiffs Alaska Airlines, Inc. and Defendants Bradley Carey and Celeste Carey; and
Carey Travel, Inc., by and between themselves, and through their respective counsel, pursuant

1 to Fed R. Civ. Proc. 26(c), stipulate that the following Protective Order should be entered in
2 this action:

3 **STIPULATION**

4 **Scope of Agreement**

5 1. This Agreement shall govern the use and disclosure of certain sensitive
6 and confidential information designated in good faith by a party to this litigation as being
7 “Confidential” or “Highly Confidential,” as set forth below, and which is contained in (a) any
8 documents, written discovery responses, or tangible evidence produced in this litigation by
9 means of discovery and (b) any transcripts of depositions taken in this action. This
10 Agreement establishes a procedure for the expeditious handling of such Confidential or Highly
11 Confidential information; it shall not be construed as an agreement to or as creating any
12 presumption on the confidentiality of any document.

13 2. The attorneys of record, and all others to whom any such designated
14 Confidential or Highly Confidential information and material is disclosed, shall maintain such
15 designated Confidential or Highly Confidential information and material in strict confidence,
16 shall not disclose such designated Confidential or Highly Confidential information and
17 material except in accordance with this Agreement, and shall use such designated
18 Confidential or Highly Confidential information and material solely for this litigation. All
19 produced Confidential or Highly Confidential information and material shall be carefully
20 maintained in secure facilities (such as law firm offices), and access to such Confidential or
21 Highly Confidential information and material shall be permitted only to persons properly
22 having access thereto under the terms of this Agreement.

1 **Confidential Information**

2 3. Any party claiming that documents, written discovery responses, or tangible
3 evidence constitute or include Confidential information or material shall mark those portions
4 of the material considered in good faith to be confidential (in such manner as will not interfere
5 with the legibility thereof) with the legend: “Confidential.” Deposition testimony may be
6 designated as “Confidential” by invoking this Agreement on the record with respect to
7 specific designated testimony, or by using the procedure described in Paragraph 5, below.

8 4. By designating materials as Confidential, the parties and their counsel
9 represent that they have a good faith belief that the materials so designated contain sensitive
10 and confidential financial information, personal information, trade secrets, or other
11 confidential information entitled to a protective order under Fed R. Civ. Proc. 26(c).

12 5. If depositions are conducted which involve Confidential information, each
13 party shall have until ten (10) days after receipt of the deposition transcript within which to
14 inform the other parties of the portions of the transcript (by specific page and line reference)
15 to be designated Confidential. Prior to the expiration of the ten (10) day period, the entire
16 deposition transcript shall be treated as Confidential information.

17 6. Confidential information or material (including any copies thereof, notes made
18 therefrom, and the information contained therein) may be disclosed only to the following
19 persons:

- 20 6.1 Counsel for any party in this action, including in-house counsel, who is
21 actively engaged in the prosecution or defense of this action;
22 6.2 Other lawyers, secretaries, paralegal assistants, and clerical personnel
23 employed by counsel who are actively engaged in assisting counsel (as
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described in paragraph 6.1) with the prosecution or defense of this action;

6.3 Parties and directors, officers and employees of any party in this action (i) who are actively engaged in assisting counsel (as described in paragraph 6.1) with the prosecution or defense of this action, or (ii) who are being advised by counsel regarding this action, if the particular disclosure is reasonably necessary with regard to the legal advice being tendered.

6.4 Persons or entities noticed for depositions or designated as trial witnesses and their counsel to the extent reasonably and in good faith deemed necessary by counsel for any of the parties adequately to prepare such deponents and witnesses to testify. Prior to disclosure, the proposed recipient shall read and sign an agreement in writing in the form attached as Exhibit A, provided, however, that if such person is a current employee of the producing party subject to paragraph 6.3 above, no such agreement will be required;

6.5 The Court, Court personnel, and court reporters retained in connection with this action;

6.6 Experts retained by an attorney but only to the extent that the expert, prior to receiving any Confidential information or material, has received a copy of this Agreement and Order and signed an agreement (in substantially the form presented in Exhibit A hereto) evidencing his intent to be bound by its terms, including his agreement not to divulge any Confidential information or material to any other person, his

1 agreement not to use any Confidential information or material for any
2 purpose other than this litigation, his consent to the jurisdiction and
3 contempt power of this Court with respect to the enforcement of the
4 order, and his agreement to return to the disclosing attorney within
5 twenty (20) days after termination of this litigation (a) all documents
6 and other material containing designated Confidential information and
7 material received by him and all copies thereof and (b) all reports,
8 correspondence and other tangible things in his possession or control
9 which contain any Confidential information, or material disclosed to
10 such expert; and

11 6.7 Any person that a document on its face indicates has seen or been sent
12 the document or a copy of it, such as authors, recipients, or signatories.

13 7. Nothing in this Agreement shall be deemed to restrict in any manner the use by
14 any party of its own documents, information, or materials.

15 **Highly Confidential Information**

16 8. Any party claiming that documents, written discovery responses, or tangible
17 evidence constitute or include Highly Confidential information or material shall mark those
18 portions of the material considered in good faith to be highly confidential (in such manner as
19 will not interfere with the legibility thereof) with the legend: "Highly Confidential –
20 Attorneys' Eyes Only." Deposition testimony may be designated as "Highly Confidential" by
21 invoking this Agreement on the record with respect to specific designated testimony, or by
22 using the procedure described in Paragraph 10, below.

23 9. By designating materials as Highly Confidential, the parties and their counsel
24 represent that they have a good faith belief that the materials so designated contain extremely
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1 sensitive and confidential proprietary and/or personal or medical information, including,
2 without limitation, such information relating to third parties, entitled to a protective order
3 under Fed R. Civ. Proc. 26(c).

4 10. If depositions are conducted which involve Highly Confidential information,
5 each party shall have until ten (10) days after receipt of the deposition transcript within which
6 to inform the other parties of the portions of the transcript (by specific page and line
7 reference) to be designated Highly Confidential. Prior to the expiration of the ten (10) day
8 period, the entire deposition transcript shall be treated as Highly Confidential information.

9 11. Highly Confidential information or material (including any copies thereof,
10 notes made therefrom, and the information contained therein) may be disclosed only to the
11 following persons:

12 11.1 Counsel for any party in this action, including in-house counsel, who is
13 actively engaged in the prosecution or defense of this action;

14 11.2 Other lawyers, secretaries, paralegal assistants, and clerical personnel
15 employed by counsel who are actively engaged in assisting counsel (as
16 described in paragraph 11.1) with the prosecution or defense of this
17 action;

18 11.3 The Court and its personnel, as necessary in support of motions,
19 pleadings and other court papers and proceedings;

20 11.4 Experts retained by an attorney but only to the extent that the expert,
21 prior to receiving any Highly Confidential information or material, has
22 received a copy of this Agreement and Order and signed an agreement
23 (in substantially the form presented in Exhibit A hereto) evidencing his
24 intent to be bound by its terms, including his agreement not to divulge
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1 any Highly Confidential information or material to any other person,
2 his agreement not to use any Highly Confidential information or
3 material for any purpose other than this litigation, his consent to the
4 jurisdiction and contempt power of this Court with respect to the
5 enforcement of the order, and his agreement to return to the disclosing
6 attorney with twenty (20) days after termination of this litigation (a) all
7 documents and other material containing designated Highly
8 Confidential information and material received by him and all copies
9 thereof and (b) all reports, correspondence and other tangible things in
10 his possession or control which contain any Highly Confidential
11 information, or material disclosed to such expert;

12 11.5 Deponents whose depositions have actually been noticed and scheduled
13 to be taken; provided, however, that written notice shall be provided by
14 counsel for all parties at least 3 business days prior to any Highly
15 Confidential documents being disclosed to any such deponent. The
16 notice shall state the name of the deponent and his or her current
17 employer, title, address and phone number and shall identify the highly
18 confidential documents which will be disclosed. Prior written notice
19 pursuant to this subparagraph need not be given if (i) the deponent is
20 authorized to have access to highly confidential documents pursuant to
21 one or more other provisions of this Order, or (ii) the deponent
22 produced the Highly Confidential documents, or is a current employee
23 of the party who produced the Highly Confidential documents to be
24 disclosed. If any party objects to the disclosure of Highly Confidential
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1 information to a deponent they may, either by expedited motion or
2 expedited conference with the Court, seek the Court's assistance in
3 resolving their objection. The party objecting shall state the reason for
4 its objection in a writing provided to all parties prior to the expiration
5 of the 3 business day period, and their intent to either file an expedited
6 motion or seek an expedited conference with the Court to resolve the
7 matter;

8 11.6 The Court, Court personnel, and court reporters retained in connection
9 with this action; and

10 11.7 Any person that a document on its face indicates has seen or been sent
11 the document or a copy of it, such as authors, recipients, or signatories.

12 12. Nothing in this Agreement shall be deemed to restrict in any manner the use by
13 any party of its own documents, information, or materials.

14 **Other Provisions**

15 13. If any party believes that any document or information which is claimed to be
16 Confidential or Highly Confidential does not contain confidential or highly confidential
17 material, it may contest the applicability of this Agreement to such information by notifying
18 the opposing party's counsel in writing and identifying the information contested. The parties
19 shall have seven (7) days after such notice to meet and confer and attempt to resolve the issue.
20 If the dispute is not resolved within said period, the party seeking the protection shall have
21 seven (7) additional days in which to make a motion for the protection of such document or
22 information. The document or information that is subject to a dispute as to whether it is in
23 fact Confidential or Highly Confidential, shall, until further order of the Court, be treated as
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1 designated (Confidential or Highly Confidential) in accordance with the provisions of this
2 Agreement.

3 14. Any party may seek an order of the Court modifying this order, seek greater or
4 lesser protection for any information or material sought to be discovered, or seek an order
5 pursuant to Fed R. Civ. Proc. 26(c) or other applicable rule or law that other Confidential or
6 Highly Confidential information not be revealed.

7 15. In the event that any responsive document ("Document") contains a
8 confidentiality or nondisclosure provision to which a party hereto is bound, the parties shall
9 proceed as follows:

10 (a) The party under an obligation to produce the Document shall promptly
11 notify the other parties to the Document of the request to produce the document in this
12 litigation. If the other parties consent to the production of the document for use in this
13 litigation, the document shall be produced, unless other grounds for refusal to produce the
14 document exist. Such consent of the third party may be conditioned upon the document being
15 produced either as Confidential or Highly Confidential hereunder.

16 (b) If the other party or parties to the Document refuse to waive the
17 confidentiality or nondisclosure provision to allow the production of the document hereunder,
18 even as conditioned above, or if the other party or parties to the Document fail to respond
19 within fifteen (15) days of the producing party's request for waiver, the producing party shall
20 provide written notice (the "Notice") to the requesting party of the existence of the
21 confidentiality or nondisclosure provision in the responsive document. The Notice shall
22 identify the document by name, a brief summary of the content of the document, and provide
23 the name of the other party or parties to the contract, a contact person, address and telephone
24 number for each of the other party or parties to the contract.
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1 (c) Either party may file a motion with this Court or in any other Court of
2 competent jurisdiction to oppose or compel production of the Document.

3 16. The disclosure by the producing party of Confidential or Highly Confidential
4 information or material, regardless of whether the information was so designated at the time
5 of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of
6 confidentiality with respect to third parties, either as to the specific information disclosed or
7 as to any other information relating thereto or on the same or related subject matter. Nothing
8 in this Agreement shall be deemed to waive any claim of privilege or of work product
9 immunity.

10 17. The parties are free to designate any document not filed with the Court as
11 "Confidential" or "Highly Confidential" and limit its dissemination and use. However, any
12 document filed with the Court is presumptively a public document. Consistent with court
13 rules and recent case law, any party including Confidential or Highly Confidential documents
14 or information with any pleading, motion, deposition transcript, or other paper filed with the
15 Clerk of this Court, shall, by separate motion or stipulation, noted for hearing without oral
16 argument seek an order from the Court permitting the Confidential or Highly Confidential
17 information or material to be filed under seal, so that the Court may make particular findings
18 justifying the limitation on public access as may be appropriate. As a guide for the parties,
19 the Court shall (i) require the proponent of any sealing or redaction to make some showing of
20 the need to do so; (ii) permit anyone present when the motion is made to object; (iii) perform
21 an analysis of whether a requested limitation on access would be the least restrictive means
22 available and effective in protecting the interests threatened, (iv) show that the court weighed
23 the competing interests of parties and the public and considered the alternative and less
24 restrictive methods, if any, and (v) enter an order that is no broader in its application or
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1 duration than necessary to serve its purpose. The burden is on the party proposing that that
2 the document be sealed to provide the needed information so that the Court can determine
3 whether all, a portion, or none of the document may be filed under seal. Court findings and
4 conclusions reflecting the same and authorizing any sealing or redaction must also be filed.

5 18. To expedite the production of information, the parties may inadvertently
6 produce documents that are privileged, including but not limited to documents protected by
7 attorney-client privilege or work product doctrine. Inadvertent production of privileged
8 documents shall not be deemed a waiver of any applicable privilege. Upon discovery that
9 privileged documents have inadvertently been produced, the producing party shall promptly
10 notify the other parties. Upon such notification, the parties shall treat the documents as
11 privileged unless and until the Court has sustained a challenge to the assertion of privilege. If
12 no such motion is filed, all parties shall return to the producing party, or destroy, all copies of
13 the privileged documents in their possession or in the possession of their counsel or any other
14 person under their control. Written confirmation of this return or destruction of documents
15 shall be provided to the party asserting the privilege. If the parties do not agree that such
16 documents are privileged, a motion asserting such a challenge must be filed within fourteen
17 (14) days after a party receives a notice of a claim of inadvertent production of privileged
18 documents. If no such motion is filed, all parties shall, within fourteen (14) days of receipt of
19 notification of the inadvertent production, return to the producing party, or destroy, all copies
20 of the privileged documents in their possession or in the possession if their counsel or any
21 other person under their control. Written confirmation of this return or destruction of
22 documents shall be provided to the party asserting the privilege.

23 19. Within sixty (60) days after the termination of this litigation, counsel of record
24 shall (a) return all tangible documents and other material containing designated Confidential
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1 or Highly Confidential information and material and copies thereof within such counsel's
2 custody or control received from or by authorization of the producing party or its agents, and
3 (b) serve upon the producing party a certification that this order has been fully complied with
4 by such counsel unless there has been any noncompliance, in which event such counsel shall
5 state fully in such certification the material facts and circumstances concerning any
6 noncompliance.

7 20. The parties may at any time stipulate to a modification by the Court of this
8 Agreement and Order as to any particular portion of the Confidential or Highly Confidential
9 information or material, without affecting the continuing validity of this Agreement and Order
10 as to any other Confidential or Highly Confidential information or material.

11 DATED: November 7, 2008

12 **CORR CRONIN MICHELSON**
13 **BAUMGARDNER & PREECE LLP**

14 By: /s/

15 Kelly B. Corr, WSBA No. 555
16 Steven W. Fogg, WSBA 23528
Attorneys for Plaintiffs

17
18 **WARREN & DUGGAN, PLLC**

19
20 By: /s/

21 Michael Warren, WSBA No. 14177
22 Attorneys for Defendants
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1 **ORDER**

2 The Court having reviewed the foregoing Agreement of the parties, and being duly
3 advised, the Court hereby orders pursuant to Fed Civ. R. Proc. 26(c) that the parties'
4 disclosure and exchange of Confidential and Highly Confidential information, as defined
5 herein, shall be governed by the terms of this Agreement, and this Agreement is hereby
6 approved and entered by the Court.

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8 Dated this 24th day of November, 2008.

9 
10 RONALD B. LEIGHTON
11 UNITED STATES DISTRICT JUDGE

12 Presented by:

13 CORR CRONIN MICHELSON
14 BAUMGARDNER & PREECE LLP

15 By: /s/ _____
16 Kelly B. Corr, WSBA No. 555
17 Steven W. Fogg, WSBA 23528
Attorneys for Plaintiffs

18 WARREN & DUGGAN, PLLC

19 By: /s/ _____
20 Michael Warren, WSBA No. 14177
21 Attorneys for Defendants
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23
24
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1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE**
3 **ORDER**

4 The undersigned, _____, hereby acknowledges that he or
5 she received a copy of the Stipulated Protective Order entered in the matter of *, and has read
6 and agrees to be bound by all of the provisions thereof. The undersigned agrees (i) not to
7 divulge any Confidential or Highly Confidential information or material to any other person
8 as designated and defined therein; (ii) not to use any such Confidential or Highly Confidential
9 information or material for any purpose other than this litigation; (iii) to return to the
10 disclosing attorney with twenty (20) days after termination of this litigation all documents and
11 other material containing such designated Confidential or Highly Confidential information
12 and material received by him or her and all copies thereof, and all reports, correspondence and
13 other tangible things in his possession or control which contain any such Confidential or
14 Highly Confidential information or material disclosed to him or her. In addition, the
15 undersigned consents to the jurisdiction and contempt power of this Court with respect to the
16 enforcement of the Stipulated Protective Order.

17 DATED this ____ day of _____, _____
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